

PROPOSED REGULATIONS

Subchapter 12, Sections 1896.300--1896.370 to Title 2, Division 2, Chapter 3 of the California Code of Regulations

TITLE 2. Administration

Division 2. Financial Operations

CHAPTER 3. Department of General Services

SUBCHAPTER 12. Personal Services Contracts

SECTIONS 1896.300 - 1896.370

1896.300. Definitions

For purposes of complying with Government Code Section 19134, the following definitions apply:

(a) A "Qualifying Contract" is any contract meeting the following conditions:

(1) A contract executed by a state agency with a provider of personal services, and

(2) The contract is in force for 91 days or more, and

(3) The contract includes janitorial, housekeeping, custodian, food service, security guard, laundry or window cleaning services.

(b) "Covered Employee" means a person who performs any of the services identified in 1896.300(a)(3), above, as more than an incidental part of their duties under a Qualifying Contract. Covered Employee does not include either:

(1) A person who performs solely supervisory or administrative services under a Qualifying Contract, or

(2) An owner-operator.

(c) "Employee Benefits" means coverage a contractor provides to a Covered Employee, either through a purchased plan or by self-insurance, for:

(1) Basic health care, as identified in 10 CCR Section 1300.67, and

(2) Dental services, and

(3) Vision services.

(d) "Cash Payment" means a dollar amount a contractor pays to a Covered Employee on a Qualifying Contract in lieu of providing Employee Benefits.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (b), (c)(2), (d), and (g), Government Code.

1896.310. Contractor Requirements

In order to comply with Government Code Section 19134, a contractor entering into a Qualifying Contract shall provide one of the following:

- (a) Employee Benefits to Covered Employees costing not less than 85% of the state cost for employee benefits for a State of California employee performing similar work; or
- (b) Cash Payments to Covered Employees of an amount not less than 85% of the state cost for employee benefits for a State of California employee performing similar work; or
- (c) A combination of Employee Benefits and Cash Payments totaling not less than 85% of the state cost for employee benefits for a State of California employee performing similar work.

Note: Authority cited: Sections 19134(f) Government Code. Reference: Sections 19134(a) and (d), Government Code.

1896.320. Benefits and Cash Payment Calculations

State agencies shall refer to the Department of Personnel Administration's Schedule of Employee Benefit Rates (published online by February 1 of each year at www.dpa.ca.gov/benefits/general/contractors.shtm) to determine the required Employee Benefit and/or Cash Payment amounts for Qualifying Contracts. Each agency shall select for any Qualifying Contract either the Detailed Rates or the Blended Rate appearing on the most recent Schedule. Detailed Rates and Blended Rates, are calculated as specified in subsections (a) and (b) below:

(a) Detailed Rates

Detailed rates consist of the State of California costs for employee benefits per employee per month for employees performing services specified in 1896.300(a)(3), and a calculation of 85 percent of these costs per employee per hour. These costs will be provided for three coverage categories: a single employee with no covered dependents, an employee with one covered dependent, and an employee with two or more covered dependents.

Detailed hourly rates are calculated by determining the costs per hour for each of the three coverage categories defined in (a), using the following steps:

- (1) Add together the monthly state costs for health benefits, dental benefits and vision benefits for state employees in each of the categories listed above who perform services listed in 1896.300(a)(3),
- (2) Divide the monthly state costs per employee obtained from (a)(1) above by

173.333.

(b) Blended Rates

Blended rates consist of the average of State of California employee benefit costs per employee per month for all employees performing the services specified in 1896.300(a)(3), and a calculation of 85 percent of this cost per employee per hour.

Blended hourly rates, based on the average cost per hour for all employees in all categories, are calculated by the following steps:

(1) Add together the monthly state costs for health benefits, dental benefits and vision benefits for state employees who perform services listed in 1896.300(a)(3).

(2) Divide the monthly costs per employee obtained from (b)(1) above by 173.333.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (c)(1), and (c)(2), Government Code.

1896.330. Reimbursement to State Agencies

State agencies may refer to applicable Department of Finance Budget Letters for budget instructions regarding reimbursements to state agencies for the costs of Employee Benefits and/or Cash Payments under Qualifying Contracts.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(c)(1) and (f), Government Code.

1896.340. Qualifying Contract Solicitations

Solicitations for Qualifying Contracts shall include the following provisions requiring compliance with Government Code 19134:

- (a) Contracting agencies shall notify potential bidders that the contract to be awarded is subject to Government Code section 19134 and shall instruct potential bidders to include in their bids provisions for Employee Benefits and/or Cash Payments to all Covered Employees.
- (b) Contracting agencies shall identify in the solicitation whether provision for Employee Benefits and/or Cash Payments should be bid by the bidder as part of the cost bid or should be committed to by the bidder as a minimum qualifications requirement.
- (c) Contracting agencies shall specify the applicable benefit rate(s) for the contract (based on the current Schedule of Employee Benefits Rates published by the Department of Personnel Administration). If the solicitation specifies that Employee Benefits and/or Cash Payments shall be part of the bidder's cost bid, the rate(s) specified in the solicitation shall be used by bidders for cost bid calculations.
- (d) Rate changes published by the Department of Personnel Administration after issuance of a solicitation, but prior to the bid due date, shall be included in an addendum to the

solicitation.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (c)(1), and (f), Government Code.

1896.350. Bids for Qualifying Contracts

Bids for Qualifying Contracts shall include, in addition to all other requirements specified in the solicitation, a commitment by the bidder to comply with the requirements of Government Code Section 19134 and these regulations.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (c)(1), (d), and (f), Government Code.

1896.360. Requirements for Qualifying Contracts

(a) Qualifying Contracts shall contain:

- (1) A provision mentioning Government Code Section 19134 and the applicable Employee Benefit rate(s) (blended or detailed).
- (2) A provision allowing for adjustment of Employee Benefits and/or Cash Payment amounts in the event of a change to the Schedule of Employee Benefit Rates published by the Department of Personnel Administration during the term of the contract. Any published rate changes that occur during the term of the contract shall be given effect by contract amendment, with an effective date retroactive to the date rate changes were published by the Department of Personnel Administration.
- (3) A provision that the contractor must submit to the contracting agency monthly reports that comply with Section 1896.370(a).
- (4) A provision that the contract is subject to audit for compliance with the provisions of Government Code section 19134.
- (5) A provision stating that failure to comply with the provisions of Government Code section 19134 constitutes a material breach, which could subject the contract to immediate termination by the state.

(b) Before execution of the contract, employers choosing to offer Employee Benefits shall provide evidence of coverage to the contracting agency.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (c)(1), (d), (e), and 19134(f), Government Code.

1896.370. Compliance

(a) In order to receive any payment under a Qualifying Contract, contractors shall provide monthly reports to the contracting agency during the term of a Qualifying Contract. These reports shall include:

(1) The number of Covered Employees who received Employee Benefits and/or Cash Payments in the preceding month

(2) The name of each Covered Employee who received Employee Benefits and/or Cash Payments in the preceding month

(3) The number of hours each Covered Employee worked on the Qualifying Contract in the preceding month

(4) The amount paid to each Covered Employee for Employee Benefits and/or Cash Payments in the preceding month

(5) The total monthly cost of Employee Benefits and/or Cash Payments in the preceding month, excluding any administrative or indirect costs

(b) Qualifying Contracts and documents relating to implementing Government Code 19134 may be audited by the contracting state agency, the Department of General Services, and the Bureau of State Audits.

(c) Government Code 19134(e) provides that failure to provide Employee Benefits or Cash Payments to employees constitutes a “material breach” for any contract for personal services covered by that section. A breach can result in immediate contract termination by the state.

Note: Authority cited: Section 19134(f), Government Code. Reference: Sections 19134(a), (c)(1), (d), (e), and (f), Government Code.